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Between a rock and a hard place: domestic abuse and being a migrant woman in England and Wales

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Legal responses to domestic abuse have been a political priority of the UK Government since at least 2010, eventually leading to the passing of the seminal legislation in this area for England and Wales, the Domestic Abuse Act 2021. However, the exclusion of protection for migrant victim-survivors with precarious immigration statuses under the Act demonstrates a failure in understanding that the experience and risk of domestic abuse differ for these individuals from that of the mainstream, due to their intersectional identities as (predominantly) migrant women. Many migrant victim-survivors still find themselves trapped in abusive situations, as the law fails to safeguard their rights to reside legally should they choose to present themselves to authorities by reporting their abuse. A distinct lack of acknowledgment as to inequalities faced by those at the intersection of migrant status and gender (Crenshaw, 1989; 1991) has led to increased insecurity for some of the most vulnerable. This article shines a light on this discrimination under the law in England and Wales. It adopts an intersectionality framework to examine such inequality, analysing Appendix Violence Domestic Abuse and the Migrant Victim Domestic Abuse Concession in UK immigration law, as well as the Support for Migrant Victims Pilot and its relevant Evaluation Report, against the international standards of the Istanbul Convention. It argues that the UK Government is failing to tackle the problem of migrant victim-survivors' protection concerning domestic abuse, and in some situations, has made it worse.

This article aims to state the law as of 1 May 2024.

Keywords intersectionality • domestic abuse • Domestic Abuse Act 2021 • migrant women • hostile environment

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Introduction

The problem of domestic abuse and how to tackle it in England and Wales had been a longstanding priority of the UK Government, when in November 2010 it first published its Call to End Violence Against Women and Girls. However, it was over a decade after the original strategy was launched that the Domestic Abuse Act

2021 (hereafter, the Act) came into force at the end of April that year, becoming the main piece of legislation responding to domestic abuse in England and Wales.[1] The Government congratulated itself for this, having finally taken action in certain key areas pertaining to domestic abuse (Storey, 2023). Yet, what the Act notably failed to do was to resolve persistent legal problems that migrant victim-survivors of domestic abuse with precarious immigration statuses faced, and had faced for years. These individuals, primarily women,[2] found themselves outside the scope of protection under the Act, much to the dismay of those who had long campaigned for their legal protection (Latin American Women's Rights Service et al, 2020).

The choice to exclude migrants from the scope of the Act is argued to be attributable to the UK Government's increasingly negative attitude towards immigrants. In the lead up to its referendum to leave the European Union in 2016, politicians consistently pledged to reduce migration to the UK, following the introduction of the 'hostile environment', a policy from 2012 that now underpins most immigration laws and policies (Kirkup and Winnett, 2012). This infamous policy was part of efforts made to deter anyone deemed to be 'illegal' from remaining in the UK. A great deal of political capital has since been put into curbing immigration through stricter laws and policies, fuelled in recent years by the Brexit vote, building upon prevailing xenophobia against migrants from before the referendum (Rzepnikowska, 2019: 61). When the proposed Draft Domestic Abuse Bill 2019 was published, queries were raised about the exclusion of some of the most vulnerable victim-survivors of domestic abuse from its scope, seemingly on the basis of their migrant status. Immigration precarity became the main reason why someone would not benefit from protection afforded by the incoming Act. For this reason, this group of excluded victim-survivors in England and Wales is the main focus of analysis in this article.

Discrimination faced by migrant victim-survivors of domestic abuse has been widely discussed for several decades in the US context (see, non-exhaustively: Crenshaw, 1991; Erez, 2002; Sokoloff and Dupont, 2005; Bettinger-Lopez et al, 2020; Bhandari and Sabri, 2020; Koegler et al, 2022; Raj and Choi, 2022), but comparatively far less in the UK (Burman and Chantler, 2005; Anitha, 2008; Anitha, 2011; Graca, 2017; Briddick, 2020a). This article analyses the extent of such discrimination against migrant women in the context of domestic abuse in England and Wales, but also given recent changes to UK immigration law in early 2024. It critically assesses the reality of legal protection offered to migrant victim-survivors, to argue that provisions under UK immigration law associated with the hostile environment policy are why migrant victim-survivors of domestic abuse find themselves in such a unique vulnerable position concerning their protection from domestic abuse (Crenshaw, 1989; 1991). It will consider Appendix Victim Domestic Abuse (hereafter, VDA) under the UK's Immigration Rules, and the Migrant Victim Domestic Abuse Concession (hereafter, MVDAC), a policy operating as an exceptional concession under immigration law for certain migrant victim-survivors. The article also examines the effectiveness of the accompanying pilot scheme for migrants in England and Wales, the Support for Migrant Victims Pilot (hereafter, the SMV Pilot), considering the legal standards set by international law under the Convention on preventing and combating violence against women and domestic violence (hereafter, the Istanbul Convention) vis-à-vis the SMV Pilot.

The article is structured as follows: first, migrant victim-survivors' rights are put into context, in view of the developments leading up to the Act's coming into force. The focus will be on why they were excluded. Second, the article explores how being at the

intersection of precarious migrant status and gender in England and Wales has become a vulnerable position to be in within the context of the hostile environment, using intersectionality to draw out the nuances of being at this intersection under the law. Third, the article examines how Appendix VDA and the MVDAC's applicable criteria operate to exclude those holding certain immigration statuses from legal protection that seeks to tackle domestic abuse. Finally, the article considers whether the Government's SMV Pilot and its official Evaluation Report show that the UK is adhering to its obligations to non-discrimination under international law in the Istanbul Convention.

The legal background: migrants under the hostile environment, outside the scope of the Domestic Abuse Act 2021

In 2017, the UK Government announced its intention to introduce a Domestic Abuse Bill. Following a year-long public consultation, the Draft Domestic Abuse Bill was set forth in 2019. It was introduced as the UK had finally announced its intention to ratify the Istanbul Convention and officially incorporate international obligations on women's rights into domestic law via the Act. The Istanbul Convention is an international legally-binding set of provisions that was the first to seek to tackle violence against women and domestic violence as 'a violation of human rights violation and a form of discrimination' (Article 3(a)). It encompasses a broad set of provisions that cover different areas of law under Chapters V–III, including civil, criminal, administrative and migration. However, implementation of the Istanbul Convention has been a challenge, with many States signing the Convention at the outset in 2011, but delaying ratification, which would have allowed for the Convention to become legally binding in their jurisdictions.

In the UK's case, it was only after a decade as signatory, and only once the Government was satisfied that its domestic law was in compliance with it, that it announced its intention to ratify. The Act's coming into force was central to its decision to do so. Disappointingly, what should have been positive developments for the rights of victim-survivors of domestic abuse in the UK through ratification was undermined by two related problems. Firstly, there were scant references specifically to migrants' rights before the Bill become an Act, despite years of campaigning by specialist third-sector charities known as 'by-and-for' organisations – charitable organisations specifically for migrant women, led by migrant women (Lipscombe, 2021: 45ff). Secondly and relatedly, the Government was able to somewhat justify this exclusion of migrant rights by putting forward several reservations to the Istanbul Convention prior to full ratification, as it sought to modify its legal obligations under the Convention around granting equal protection to migrants (Briddick, 2020b).

Amendments to the Bill were put forward by the UK's upper Parliamentary house, the House of Lords, in an attempt to address the gaps pertaining to migrant victim-survivors' rights before the Bill became law. As mentioned previously and explained more fully later, the UK had already offered some rights and concessions to migrant victim-survivors, but these were narrow in scope, hence amendments seeking provision of temporary rights to remain and access to public funds for a maximum of six months for migrant victim-survivors, with a subsequent option to then apply for settlement (Amendment 41). The House of Lords also suggested including equal and effective support for all victim-survivors regardless of immigration status, as required under international law in the Istanbul Convention (Amendment 43; see House of Lords, 2021).

However, these amendments were eventually rejected in the final version of the Act, and instead, the Government decided that it would first need to assess the state of the problems facing migrant victim-survivors via the SMV Pilot, in order to decide what support was needed before formal legal protection was offered. There was precedent for piloting protection for migrant women before officially accepting provisions into law (Home Office, 2012a). Yet, in this context, the SMV Pilot allowed the Government to delay any formal protection in the Act for these women, while still maintaining that it was taking action to 'protect' migrant women's rights, irrespective of whether it was adequate or not. Therefore, to this day, many migrant women still find themselves outside the scope of legal protection.

When the UK announced its intention to modify its obligations under the Istanbul Convention by reserving Article 59 (among other provisions), it drew wide criticism because Article 59 would have required the UK to protect a migrant victim-survivor's residence status upon relationship breakdown, where there was dependence on an abuser for legal rights to remain. Members of the House of Lords on the International Agreements Committee (House of Lords, 2022), a UK Parliamentary committee appointed to consider international agreements, continued to vocalise their opposition to such exclusion of migrants' rights, given that over the years, only incremental piecemeal steps had been taken to address the lacuna in the law around guaranteeing residency rights for such migrant victim-survivors in England and Wales. While disappointing, the reservation simply confirmed what the Act also failed to do, that is, provide protection for migrants. The Joint Committee on the Draft Domestic Abuse Bill, a UK Parliamentary committee tasked with scrutinising the Bill, lamented how migrant rights was a 'missed opportunity' (House of Lords and House of Commons, 2019) for the Bill, which was more poignant in light of the Convention's reservations. Both developments were especially regrettable after so many years without an adequate long-term solution under the law.

Yet, despite the starkness of these problems pertaining to the rights of migrant victim-survivors of domestic abuse, the Government nonetheless expedited the Act's coming into force without the requisite protection for this group of individuals, among increased reports of domestic abuse and added pressure to act swiftly (Dawsey-Hewitt et al, 2021). At the end of 2022, once the UK ratified the Istanbul Convention and reserved Article 59 in the process, the intersection of immigration law and protection against domestic abuse became a problem of international as well as domestic law. It is against this backdrop of enduring discrimination within the hostile environment for immigrants in the UK and international law standards on women's rights that immigration law as it applies to migrant victim-survivors in England and Wales is analysed. The argument is that the Government's decision to exclude protection for migrant victim-survivors has consequences, and the law failing to resolve these problems indicates a lack of understanding towards what it is to be at the intersection of migrant status and gender. By focusing instead on understanding their experiences at this particular intersection under the law, this article uncovers these gaps.

The theoretical framework: the intersection of gender and migrant status

Intersectionality is the theoretical tool used in this article to explicate how migrant victim-survivors find themselves uniquely affected by the law in England and Wales

(Crenshaw, 1989; 1991). It is understood here as a 'process of explication of unequal power relations rather than one that is focused on multiple and ever fragmented identities' (Chantler and Thiara, 2017: 91). Therefore, relevant inequalities at the intersection of gender and migrant status will be uncovered by considering the power exercised by the Government when enacting and enforcing immigration law against certain victim-survivors. This is exercised through offering concessions under immigration law to migrant victim-survivors, as well as through the establishment of the SMV Pilot, in lieu of including specific provisions in the new Act. It is argued that these choices have led to discrimination against migrant victim-survivors of domestic abuse, but that this is not evident on the face of it. The mere existence of both legal concessions in immigration law, and the SMV Pilot itself, mask the reality of how they apply in practice to protect (or fail to protect) some of the most vulnerable. Without examining how the law applies to those at intersections of gender and different migrant statuses, these inequalities remain hidden.

Recent statistics from October 2023 in the Crime Survey of England and Wales conclusively assert that women are the victims in 73.5% of domestic abuse-related crimes, with the prevalence rate almost double for women compared to men (Office for National Statistics, 2023). Therefore, while there was a debate on a gendered definition of domestic abuse under the Act before it passed into law (House of Lords and House of Commons, 2019: 17ff), it is outside the scope of this article. Instead, the analysis here goes beyond just noting that gender or migrant status are both risk factors for domestic abuse. Rather, it is more important to understand how different types of immigration status granted more often to migrant women can create different risks and experiences of domestic abuse due to vulnerabilities associated with the law's categorisation and treatment of different types of migrant (Anderson, 2010). Various visa categories and conditions attached to these precarious statuses can often lead to different outcomes under the law, and usually determine whether one benefits from protection as a victim-survivor of domestic abuse or not. Therefore, these problems warrant closer examination in order to fully understand the nuances of a vulnerable woman's precarious migrant status.

Migrant women have historically been considered under UK immigration law as part of family reunion, often granted more precarious statuses as dependents of economically-active (male) spouses (Ackers, 1996). As a result, certain privileges and legal rights are afforded to some, but not all, categories of victim-survivors in England and Wales. These differences become most evident when analysing who sits at the intersection of gender and migrant status, and what rights or protection are available to them in different contexts (Yong, 2023). Here, what type of dependent or partner visa a migrant woman holds makes a difference to the concessions available to them, in terms of whether they may be eligible for support, or even to remain in England and Wales, upon relationship breakdown. However, this discrimination created by the law is a problem that has been left largely unresolved, in light of the Government's decision to invoke exclusions to the Act and apply reservations to the Convention. It is argued that this is down to the phenomenon of intersectional invisibility, described as 'the general failure to fully recognize people with intersecting identities as members of their constituent groups' and 'the distortion of the intersectional persons' characteristics in order to fit them into frameworks defined by prototypes of constituent identity groups' (Purdie-Vaughns and Eibach, 2008: 381). Therefore, uncovering exactly when migrant women are granted rights or not is the aim here, as this 'make[s] visible the

systems of oppression that maintain power hierarchies and organise society while also providing a means to theorise experience at the individual level' (Smooth, 2013: 11).

To combat such intersectional invisibility in this context, Innes (2023) argues that 'thinking about insecure status as an identity characteristic allows for insecure status to be mapped to types of vulnerability'. The various insecurities associated with being a precarious migrant woman under immigration law are thus understood here as vulnerabilities associated with being a woman at risk of or experiencing domestic abuse. This seeks to avoid homogenising all migrants' experiences into one, or even all migrant women's experiences into one, to demonstrate how certain migrant women's experience of immigration law is unequal.[3] The aim is to individualise experiences under the law so as to separate migrant victim-survivors out from the majority of other victim-survivors, including those with other intersecting social characteristics such as race and class (Crenshaw, 1989; Anitha, 2008). It is also intended to separate migrant victim-survivors' experiences out from each other, in terms of the different migrant categories that affect one's ability to fall within the scope of protection offered concerning risk and experience of domestic abuse. Otherwise, incorrect assumptions about the homogeneity of the entire group risk being perpetuated.

Overall, there has simply not been sufficient acknowledgment, despite the existence of a domestic law responding to domestic abuse in England and Wales, that within it there are no guarantees of protection for those also subject to immigration law and the hostile environment. As the Act itself addresses victim-survivors without considering differences and nuances in their experiences, it is imperative to clarify when protection is only available to certain migrant women and not others through applying an intersectional framework. This brings attention to how migrant victim-survivors' experiences of the law can differ, due to how the law applies to those at the various intersections of gender and migrant status. Having established the applicable theoretical lens for this analysis, the next section explores how this inequality manifests in terms of rights and discrimination. The coming into force of the Act and existence of the SMV Pilot creates an assumption that all victim-survivors' problems have been addressed domestically. However, in reality, these developments only act to mask the continued discrimination against them.

Between a rock and a hard place: being a migrant victim-survivor of domestic abuse in England and Wales

As previously mentioned, there has been some attention in the scholarship on migrant women and their discrimination under the law in England and Wales regarding protection from domestic abuse (Burman and Chantler, 2005; Anitha, 2008; Anitha, 2011; Graca, 2017; Briddick, 2020a). However, what is less visible beneath the positive rhetoric surrounding the Act's coming into force is that while this legislation sought to address very relevant problems facing victim-survivors in England and Wales in general, many of its provisions only apply to women not subject to immigration restrictions under the hostile environment. For many of the most vulnerable migrant victim-survivors, the hostile environment exacerbates what is already a difficult situation of domestic abuse. Migrant status actively excludes many victim-survivors from being able to rely on certain protections under the law, despite concessions concerning domestic abuse made to immigration law, which were supposedly to protect migrant victim-survivors (Anitha, 2010). Therefore, it is only by examining the intersection

of a migrant victim-survivor's precarious immigration status and their gender-based vulnerabilities that their legal realities can be fully understood.

Migrant victim-survivors' rights were adopted as a priority of the Domestic Abuse Commissioner (2021; 2022) when its Office was established by the Act itself. It has made, and continues to make, recommendations to the Government about how to address the legislative gap that exists on migrant victim-survivors' rights. Yet, despite the extensive attention placed on migrant victim-survivors' rights right from the beginning, the Government still chose to exclude protection for migrant women in the Act, effectively cementing discrimination against them. To understand how immigration law operates to the disadvantage of those at risk of or experiencing domestic abuse, the next section considers the VDA route under Appendix VDA, and its associated MVDAC, to demonstrate exactly how such discrimination manifests. Despite Appendix VDA and the MVDAC somewhat expanding concessions in early 2024, it is argued that the law has still failed to solve longstanding problems, and actually acted to create new ones.

The VDA route and the MVDAC

While various pieces of different legislation touch on elements of tackling domestic abuse pertaining to migrant victim-survivors, it was an uphill battle to obtain any specific protection in the first place (Siddiqui, 2013). In the early 2000s, the first migrant victim-survivors' rights were introduced in the predecessor to Appendix VDA, the Domestic Violence Indefinite Leave to Remain (DVILR) rule. It was a concession for married migrant women that allowed them to apply for autonomous residency rights if their marriage broke down due to domestic abuse. Anitha (2008) described this as 'a historic concession and an important theoretical step whereby women's experience of violence was the basis of a re-examination of immigration law'. However, in reality, this rule and its newer versions have not gone far enough to address all the problems that migrant women face in a holistic sense. This is due to exclusions pertaining to those with certain types of precarious immigration status that become visible when delving deeper into the substantive application of certain provisions that remain in place, and apply even more strictly in the recent iteration of settlement rights under Appendix VDA.

The original DVILR rule was introduced in light of the fact that a woman who joined a partner in the UK on a spousal visa would effectively be on probation for two years and nine months, as this was the maximum amount of time their visas could be issued for (Briddick, 2020a). After this time, an extension of two years and six months could be sought, and only then would a partner have the requisite five years of residency needed to be eligible for settlement. If the relationship broke down before a dependent was able to obtain their own independent residency status in the UK, they would risk losing any legal rights to remain because these would have derived from their abusive partner. The alternative would be to remain trapped in the abusive relationship, in order to retain the right to remain. As a concession, the VDA route is intended to give migrant spouses the opportunity to leave an abuser, and still apply for settlement independently. However, three main problems stand out when looking more closely at the route's criteria, and how it applies. The mere existence of this concession masks the reality that not all migrant women can

successfully avail themselves of such protection because of: 1) the evidence required to prove a relationship breakdown; 2) specific relationship requirements; and, 3) the No Recourse to Public Funds (NRPF) requirement, a blanket policy applicable to all migrants that denies them the ability to seek welfare from the State. Each will be considered in turn.

Firstly, conditions for settlement under the VDA route concerning evidence of relationship breakdown: in the previous version of the Immigration Rules there was a strict requirement for an applicant to produce evidence to prove their relationship had permanently broken down. Now, Guidance from the Home Office (2024) has clarified that 'The Immigration Rules do not specify any mandatory evidence or documents to be submitted with an application'. However, this does not exempt migrant victim-survivors from having to provide evidence of relationship breakdown, nor change what it considers 'conclusive' evidence; namely, what clearly satisfies VDA 4.2, Immigration Rules of there being a permanent breakdown in the relationship as a result of domestic abuse. Conclusive evidence is considered to be mostly that associated with evidence of criminal charges, police cautions or court orders. These require a victim-survivor to present themselves to authorities. The remaining 'convincing' forms of evidence also ask for other official sources or organisations to corroborate abuse. However, it is argued that these evidential requirements present obstacles to many vulnerable migrant victim-survivors, due to the barriers to disclosure that migrants face when reporting domestic abuse in the first place (Burman and Chantler, 2005).

There is longstanding evidence to suggest that migrant victim-survivors of domestic abuse fear authorities in the UK, which impacts not only on their ability to seek protection under the law, but also on the reported rates of domestic abuse, estimated to be far lower than real figures (McIlwaine et al, 2019). In 2018, the Home Affairs Committee, a Parliamentary committee set up to scrutinise the work of the Home Office, recommended that police should not focus on an individual's immigration status but continue to assist anyone seeking their help (House of Commons Home Affairs Committee, 2018). However, official guidance was then issued by the National Police Chiefs' Council (2018) recommending that once information about a migrant's immigration status was known, police should share it with relevant authorities, thus contradicting the Home Affairs Committee's recommendations. This police practice was widely condemned and led to the first 'super-complaint' issued several years later (Chief Inspector of Constabulary, 2020) as a way to raise concerns about policing that was 'significantly harming the interests of the public' (s29A, Police Reform Act 2002). However, its effects are evident, translating to inherent difficulties in proving a relationship breakdown for the purposes of seeking settlement under the VDA route.

Secondly, relationship requirements: rather than being a simple rule encompassing all partners under the various immigrant categories under the UK's complicated immigration system, only certain partners are eligible for settlement under Appendix VDA. Under VDA 4.1(a) and (aa), a 'fiancé(e) or proposed civil partner' and anyone whose partner is not 'a British citizen, settled in the UK or an European Economic Area (EEA) national in the UK with limited leave to enter or remain granted under paragraph EU3 of Appendix EU', are excluded. Insecurity is significantly heightened when recognising how many other immigrant categories exist outside of just being a migrant spouse married to someone British, settled or qualifying as an EEA national. More disappointingly, when eligibility for the MVDAC was expanded in January 2024 to allow partners of students, workers and graduates to claim rights under the

concession itself, Appendix VDA did not follow suit and still excludes them from being able to subsequently seek settlement. It is argued that the changes to the law around the MVDAC and Appendix VDA created further confusion and discrimination.

Thirdly and finally, is the No Recourse to Public Funds (NRPF) requirement, a condition of all migrants' rights to remain in the UK that denies them any access to public welfare benefits. The justification behind this policy's existence is that migrants in these visa categories would have already been asked to prove they had sufficient funds before being issued a visa. It is assumed that, as a result, these individuals can therefore be legitimately denied public funds, in order to avoid them becoming a financial burden on the welfare system. However, what has been a significant oversight is how NRPF affects some of the most vulnerable, such as those in situations of domestic abuse. If a victim-survivor leaves a partner on whom they were previously financially dependent, is eligible and applies for settlement, they could still risk becoming destitute and homeless without being able to seek public funds to support them while waiting for a decision on their settlement application. For this reason, in 2012, the Home Office rolled out legal provisions, now known as the MVDAC, that sought to help some of these women. However, as alluded to earlier, the specifics of how the MVDAC applies today has created more problems than it solves, because NRPF still hangs over the head of any migrant victim-survivor who seeks rights to remain independent of their abusive partner.

The MVDAC exists to allow for three months' temporary leave outside the Immigration Rules, access to public funds, and employment for those subject to NRPF who are seeking to flee an abusive partner. The intention is that during these three short months, a victim-survivor must seek alternative permission to remain legally (including settlement, if eligible) or otherwise arrange to leave the UK. There had, in the past, been significant discussion about the limited scope of the MVDAC's predecessor, the DDVC, as it was only available to those who were also eligible to apply for settlement under the previous DVILR rule, excluding partners of students, graduates or workers. However, the MVDAC was then extended to include these individuals within its scope. The Government repeatedly cited this change as being in response to the SMV Pilot's outcomes (Home Office, 2024: 4). However, long before the MVDAC's changes, there was already confusion in the sector around who might or might not be eligible for DVILR and the DDVC (Domestic Abuse Commissioner, 2021). The changes under the MVDAC have now muddied the waters even more, as there is a two-tier hierarchy created of those eligible for the MVDAC and settlement under the VDA, and those eligible for the MVDAC but ineligible for settlement under the VDA route.

While most victim-survivors eligible for the MVDAC would be able to apply for settlement during the three-month leave it grants, importantly, the extensions under it offered to partners of students, graduates or workers *exclude* eligibility under the VDA route for settlement. This was a stark change in comparison to the previous DDVC, where anyone who was eligible would also have been eligible for settlement under the DVILR rule. Now, partners of students, graduates or workers previously excluded from the DDVC may be eligible for temporary support under the MVDAC, but are on a cliff-edge after three months because of the requirement to seek alternative rights to remain, and yet are ineligible for settlement. In reality, obtaining the MVDAC may actually add to the insecurity of some women by firmly trapping them between a rock and a hard place, as the Government sought to give

with one hand and provide a temporary concession, but take away with the other by denying settlement. As mentioned, various other migrant categories are already outside the scope of the VDA route, and it is clear that legal powers exercised by the State have made the situation worse for many, and only better for some. It is by examining the reality of their application to certain migrant victim-survivors that this inequality becomes evident.

In light of this situation, the article turns to consider the aforementioned SMV Pilot, established in response to the Government's decision to exclude specific provisions protecting migrant victim-survivors' rights from the Act. Appendix VDA and the MVDAC, with its changes outlined concerning partners of students, graduates or workers, were supposedly introduced as a response to the SMV Pilot's Evaluation Report. It may be logical to assume that the SMV Pilot may subsequently lead to further changes to the law; after all, in 2012, the Sojourner Project piloted changes in the law for married migrant women, and eventually led to the creation of the concessions and rules that still apply today (Home Office, 2012a). Disappointingly, however, the more prevalent trend emerging from the analysis of limited rights available to migrant women is that, while some protection is granted, it remains conditional and exceptional, and must thus be subject to potential scrutiny as to international law standards.

A never-ending problem: inadequacies in the Support for Migrant Victims Pilot and breaches of the Istanbul Convention

The SMV Pilot is a scheme launched by the UK government, run through by-and-for organisations in various regions across England and Wales. Under it, housing support and subsistence payments are available to those subject to NRPF, who face destitution and homelessness upon fleeing an abuser. In August 2023, an Evaluation Report was published on the SMV Pilot, assessing its first year of operation. This section considers takeaways from the Report, as it is argued that interim promises to consider future protection for migrant women under the SMV Pilot amount to little more than discrimination against this group of vulnerable individuals, with no end in sight, even in light of the aforementioned changes under Appendix VDA and with the MVDAC. It will then briefly consider the UK's obligations in terms of the Istanbul Convention, to hold the UK accountable to migrant victim-survivors' rights by the letter of international law. By noting the weaknesses of the SMV Pilot as per its Evaluation Report, it is argued that the law has failed to address the needs of all migrant woman victim-survivors in England and Wales, and that the UK still risks breaching the Istanbul Convention as a result, despite its reservations.

The SMV Pilot began in April 2021, the same month the Act came into force. Its first year was funded by an allocation of £1.5 million from the UK Government. Since then, it has been continuously extended, with a further £1.4 million granted annually to last until 2024–25, as the Government continues to 'pilot' what might be necessary to address the problems facing migrant victim-survivors (House of Commons Debate, 2021; House of Lords Debate, 2023). While the SMV Pilot has proven effective in some ways, its outcomes have not led to necessary changes in the law that protect migrant victim-survivors' rights, despite four years of 'piloting' protection. Progress on legislative change has stalled significantly because of continuous extensions, with even the Evaluation Report significantly delayed, published over a year after the period

examined in the Report itself had ended. The overall assessment of the SMV Pilot is that of a 'mixed picture' (Home Office, 2023), further substantiating earlier arguments in this article about the law's piecemeal protection of migrant victim-survivors, and differences in the level of protection afforded to different types of migrant.

According to the Report, the SMV Pilot's main failings are in terms of longer-term, all-encompassing support. These, it is argued, can largely be attributed to the funding constraints and limited resources available under the SMV Pilot to the sheer numbers of migrant victim-survivors with different intersectional needs. The Report noted four areas of difficulty: sufficiency of provision; complexity of cases; local and regional constraints; and awareness of the Pilot itself. Most of these were problems highlighted before, during and after the Act's journey from Bill to law (Latin American Women's Rights Service et al, 2020). The common denominator in all the outlined areas of weakness is arguably the effect and operation of NRPF, which undermines the SMV Pilot's effectiveness as well as awareness of the SMV Pilot itself.

NRPF's pervasive existence and operation in the UK is now overshadowing even the operation of a short-term scheme like the SMV Pilot. The SMV Pilot, the Act, and NRPF together can be said to create more confusion in terms of who may or may not be eligible for support, due to the different rules that apply under different circumstances to different victim-survivors (as well as different migrant victim-survivors). An example of this is the duty under s57 of the Act for local authorities to provide support to victim-survivors of domestic abuse related to accommodation. As those subject to NRPF fall outside the scope of this provision, they can be turned away if authorities do not have the means to support them, despite an imposed duty under the Act. This is arguably because the alternative is to seek support under the SMV Pilot. However, it has proven itself inadequate as per the Evaluation Report, thus engendering a vicious cycle of obstacles when a migrant victim-survivor seeks support under the law.

Furthermore, it is unsurprising that sufficiency of provision is a weakness of the SMV Pilot. Since the beginning, concerns were raised around the adequacy of such limited resources from the State to support the large numbers of migrant victim-survivors in England and Wales, and their varying circumstances at the intersection of gender and migrant status. It is closely linked to the fact that complex cases often required more support, exacerbating what was already a difficult situation because of NRPF and the Pilot's limited funding, especially in light of the maximum time envisaged of 12 weeks of support under the scheme. The inadequacy of holistic support under the SMV Pilot means that a greater burden is placed on service providers and local social services to fill gaps, adding to further discrepancies in who might benefit in reality from the SMV Pilot's protection because of regional differences in support available across England and Wales. There were also reportedly a lower number of victim-survivors supported in the SMV Pilot than originally anticipated, with these figures already excluding those who 'sought help but were not able to receive it' (Home Office, 2023). As awareness and understanding of the SMV Pilot is a barrier to uptake, language and other compounding social and cultural factors contribute to making a migrant woman's ability to access and obtain help more difficult (Anitha and Gill, 2022; Käkelä and Sime, 2023).

Ultimately, the SMV Pilot failing to reach all those deserving and in need of protection led to the Report concluding that 'it was often unclear what the long-term path is for victims/survivors' (Home Office, 2023). Therefore, in an attempt

to hold the UK accountable for what has been evaluated as weaknesses of the Pilot's operation, greater scrutiny is put on the Istanbul Convention as the main international treaty providing protection of not just women victim-survivors' rights, but migrant women victim-survivors' rights. The Government's choice to reserve Article 59 has not been well received domestically (Brader, 2020), and its treatment of migrant women has been notably condemned by the UN Special Rapporteur on Violence against women and girls, its causes and consequences, following an in-country visit in February 2024 (Alsalem, 2024). As the UK is legally allowed to make reservations to the Istanbul Convention under Article 78(2), focus is on the non-reservable binding provisions. Consequently, consideration turns to Article 4(3), a specific provision that sets out that 'measures to protect the rights of victims, shall be secured without discrimination on any ground such as… migrant or refugee status, or other status'.

Article 4(3) is a broad provision that calls for statutory protection from discrimination on multiple grounds, not just limited to migrant status. These standards under the Istanbul Convention are known to the Government through mere fact of ratification, as well as by those who have raised the relevant implications of these provisions regarding the exclusion of migrant women's rights from the Act. When questioned about potential non-compliance with Article 4(3) and obligations to non-discrimination when the progress on the Istanbul Convention's ratification was being reported on, the Government claimed that adherence with Article 4(3) was '"under review" pending the evaluation and findings from the SMV scheme' (Williams, 2020). However, four years and a delayed Evaluation Report later, the SMV Pilot is still being touted as the official response to compliance with Article 4(3). Its areas of weakness have not been addressed by the changes to the MVDAC and VDA route, therefore, citing the SMV Pilot as justification for exclusions here is argued to be masking a potential breach of Article 4(3).

As NRPF is the root cause of many of the problems faced by migrant victim-survivors, abolishing it as part of law reform would eliminate most problems, including risk of a breach of Article 4(3). The most compelling reason for doing so would be to argue that the Government's current policies and provisions are simply not reaching all migrant women, and in fact, the opposite. It excludes some of the most vulnerable migrant women depending on their immigration status and captures protection of only a much smaller privileged elite group, to mask the fact that the UK is potentially breaching its international obligations. The situation is evident when focusing on vulnerabilities less visible at the intersection of different precarious migrant statuses and gender. Despite ratifying the main international instrument that specifically protects migrant victim-survivors of domestic abuse, as well as bringing an Act of Parliament on domestic abuse into force, the situation remains discriminatory because protection is not afforded to all in practice under domestic law in the UK.

Conclusion

This article highlighted the unique experiences of those at the intersection of migrant status and gender, in light of the Domestic Abuse Act 2021 coming into force after years of anticipation, yet doing so without any explicit protection for migrants. The UK Government missed an opportune moment to right the wrongs of discrimination

that migrant women have faced for so long in England and Wales, with much hinging on the existence of a specific legal provision in the Act that would otherwise offer protection and rights to them. It was especially important in light of the fact that existing legal concessions, amended by Appendix VDA and the MVDAC, revealed themselves not to be fully inclusive of all migrant women and their various precarities, borne out of the plethora of different immigration statuses that arguably exist to oppress migrant women in particular. It is these different types of immigration status under the law that has created different levels of vulnerability –concessions like the MVDAC and Appendix VDA route carrying strict eligibility conditions that mask the true reality of many migrant victim-survivors' risk and experience of protection from domestic abuse.

The Government's response to the exclusion of migrant women's rights from the Act has been inadequate regarding holistic protection of those at the intersection of gender and immigration status. The SMV Pilot's Evaluation Report highlighted that there are problems facing migrant women created by the law that the SMV Pilot has not resolved, mostly concerning migrants being subject to NRPF. Legal reform, particularly related to the abolition of NRPF, is argued to be the answer to most current problems. The UK risks being in breach of international obligations under the Istanbul Convention as the law continues to trap migrant victim-survivors between a rock and a hard place, having to choose between enduring actual domestic abuse, or enduring legal discrimination. Therefore, it is high time to acknowledge that far more needs to be done to avoid prolonging further discrimination against women at the intersection of gender and migrant status, and abolish NRPF so that more can be done regarding a full account of the holistic experiences of migrant victim-survivors of domestic abuse.

Notes

[1] Legal responses to domestic abuse in Scotland and Northern Ireland differ from England and Wales, while immigration law largely applies similarly across the UK. For this reason, the article is only focused on England and Wales and its Domestic Abuse Act 2021.

[2] All references here refer to cisgendered women, as the experience of transgender women or non-binary individuals bring their own unique vulnerabilities to an intersectional analysis, and are outside the scope of this article.

[3] Separate problems concerning the legal basis of rights for women with children is outside the scope of this article. See s17, Children Act 1989.

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Conflict of interest

The author declares that there is no conflict of interest.

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